IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 322 OF 1999.

Shri Antonio Luis Fernandes,
Retired Driver,
resident of Sonarbag,
Usgao, Goa. ... Petitioner.

VERSUS

1. State of Goa,
   through the Chief Secretary,
   Panaji, Goa.

2. The Conservator of Forests,
   North Goa Division
   with Office at Junta House,
   Panaji, Goa. ... Respondents.

Mr. S. S. Kantak, Advocate for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.R. Bharne, Government Advocate for the Respondents.

CORAM: N.N. MHATRE &
P.V. HARDAS, JJ.

DATE: 20TH JANUARY, 2004.

ORAL JUDGMENT: **(PER SMT. MHATRE, J.)**

This petition has been filed claiming re-fixation of retirement benefits payable to the petitioner, by considering the petitioner's service upto 30th August, 1997, that is, when he attained the age of 60 years. The petitioner was working as a Driver in the Forest Department and was superannuated on 30th September, 1995 upon attaining the age of 58 years. According to the petitioner, he was a workman as defined under Rule 56 of the Fundamental Rules and therefore was entitled to continue in service till the

age of 60 years i.e. upto 30th September, 1997. The petitioner's request to the Respondent No.2 to permit him to continue in service upto the age of 60 years was refused. In the meantime, this Court, by its Judgment dated 3rd February, 1997 in Writ Petition No. 326/94 has found that the Conservator of Forest Department of Government of Goa is an 'industry' and that the Driver working in the Conservator of Forest Department is a 'Workman' and therefore entitled to continue in service upto the age of 60 years. In fact, that petition was allowed and this Court granted the petitioner, wages upto the age of 60 years as also retiral benefits on the basis that he would have served in the Department till the age of 60 years.

2. The petitioner in the present case had retired in 1995 itself. Therefore the claim made in the petition is only for re-fixation of retiral benefits. In view of the decision of this Court in Writ Petition No. 326/94 the petition is allowed. The respondents shall re-fix the retiral benefits of the petitioner by considering him to be in service upto 30th September, 1997 when he attained the age of 60 years. It is however clarified that the petitioner would not be entitled to the wages upto that date.

3. Petition allowed. Rule made absolute. No order as to costs.

NISHITA MHATRE, J.

P.V. HARDAS, J.

sl.